

Background

1. This consultation paper sets out the Department's proposals for bringing Crown exemption under the town and country planning system to an end.

2. The usual constitutional position is that the Crown is exempt from all statutory provisions, unless they state to the contrary. For this purpose, the Crown includes the Queen, the Prince of Wales in right of the Duchy of Cornwall, the Crown Estate, and Government departments. Under the Parliamentary Corporate Bodies Act 1992, Parliament too is a Crown body for the purposes of planning and some other legislation.

3. Crown bodies are not entirely exempt from planning legislation; they may, for example, apply for planning permission in anticipation of disposal of their land under section 299 of the Town and Country Planning Act 1990. But most Crown development (with the exception of trunk roads which are subject to the provisions of the Highways Act 1980) is undertaken under the non-statutory arrangements in Part IV of DOE Circular 18/84 (Welsh Office 37/84). All Crown bodies have agreed to these arrangements, whereby a Crown body which wishes to develop land, obtain listed building consent or conservation area consent, or acquire hazardous substances consent, serves a notice of its proposal on the local planning authority. Where the Crown body and the local planning authority fail to reach agreement, the proposal is referred to the Secretary of State to decide whether a planning clearance can be given, if necessary following a public local inquiry.

Proposed changes

4. The Citizen's Charter White Paper noted the progressive removal of immunities which shelter Government Departments and Crown bodies from regulatory controls placed on others. The Government believes that it is now appropriate to bring Crown exemption under the planning system largely to an end in keeping with this trend.

5. The non-statutory procedures for Crown development are considered to work well in practice. But in the interests of greater accountability and openness, the Government believes that a more formal system is now appropriate. It is therefore proposed that all Crown bodies should be required to apply to the local planning authority for planning permission, listed building consent, conservation area consent, and hazardous substances consent and to the Secretary of State for National Heritage for scheduled monument consent in the normal way. These proposals will be embodied in primary legislation when a suitable opportunity arises.

6. The National Health Service Care in the Community Act 1990 removed health authorities' Crown exemption from planning legislation. The Act provided that proposals already in the system under the non-statutory procedure when the new legislation

came into effect, would continue to be dealt with in this way. It is proposed that the same principle should apply to the legislation ending Crown exemption from planning laws.

National security

7. It is proposed that development proposals involving national security will in general continue to be exempt from the planning legislation. It is intended to make provision in the legislation for a certification system whereby the appropriate Secretary of State or Minister, or official of the Royal Household or Corporate Officer of one of the Houses of Parliament would certify projects which would be exempt from the planning legislation on grounds of national security. Such projects would include those connected with the safety of members of the Royal Family and Royal Household. Where a project is certified as exempt, the Crown body will nevertheless consult the local planning authority about those aspects of the development, the details of which are not matters of national security (eg access roads). The Crown body will also provide environmental statements in appropriate cases.

8. The exemption would apply to requirements to apply for planning permission, hazardous substances consent, listed building consent, conservation area consent, and scheduled monument consent. Revocation, modification and discontinuance powers would be disappplied; so too would the "untidy land" provisions (s.215 of the 1990 Act).

Prison security

9. A proposal to build a prison on a particular site will be subject to local authority control and require planning permission. However, for security reasons it may be inappropriate for certain details of prison development (eg. the internal layout of parts of the prison or particular security measures) to be made widely known or to be subject to alteration at the insistence of the local planning authority. In such circumstances, the Home Office may certify that a particular aspect of the development proposal is exempt from the planning legislation on grounds of prison security (paralleling the procedure outlined in paragraph 7 above). This might apply, for example in connection with the special accommodation and related security measures in dispersal (high security) prisons which are used to detain terrorists and other prisoners who are regarded as particularly dangerous if they escape, and could include anti-climbing devices on fences and walls or helicopter observation towers.

Special urgency procedure

10. There may be occasions when, in the national interest, a particular development has to be completed so urgently that the normal planning procedures have to be suspended. For this reason it is proposed that a certification procedure (similar to the one mentioned in paragraph 7 above) should be available to Crown bodies, coupled with an automatic grant of planning permission 3 weeks after the application is registered. Such procedures

would be wholly exceptional and require certification by the appropriate Secretary of State or Minister, or specified officer of the Royal Household or Corporate Officer. This procedure would not apply to projects for which environmental assessment was required.

Trunk road development

11. It is proposed that trunk road development will not be included in any amendment to planning legislation. The procedures in Schedule 1 to the Highways Act 1980 and in the Highways (Inquiries Procedure) Rules 1976, provide statutory procedures equivalent to town and country planning procedures. These include provisions relating to inspection and enforcement. Full consultation with the public and relevant statutory bodies takes place at every stage of scheme development and every opportunity is given to the public to make their views known. There is already a legal requirement to undertake environmental impact assessments of trunk road schemes in accordance with EC Directive 85/337 under the Highway (Assessment of Environmental Effects) Regulations 1988 (SI 1241). These amended the Highways Act 1980. Details of these procedures are in Annex 1.

Fees

12. It is proposed that Crown bodies will pay planning application fees in the same way as other applicants for similar development.

Environmental assessment

13. It is proposed that Crown developers will generally be subject to the requirements of the Town and Country Planning (Assessment of Environmental Effects) Regulations 1988 (SI 1199) which implement EC Directive 85/337 on the assessment of the effects of certain public and private projects on the environment (commonly referred to as the EIA Directive). This will replace the non-statutory arrangements in DOE Circular 15/88 (Welsh Office Circular 23/88). An exception to this will be projects serving national defence and national security purposes (which are not covered by the Directive).

Compulsory purchase

14. It is proposed that Crown land should not be subject to the compulsory purchase provisions of the planning legislation and that compulsory purchase powers available to Crown bodies will be unaffected by the proposed legislation.

Purchase notices and listed building purchase notices

15. There is usually no entitlement to compensation for landowners following adverse planning or listed building control decisions. This is because owners usually have some continuing benefit from the present use. But in a few cases, there may be no such beneficial use and to remedy such a situation, an owner of land is entitled, in certain circumstances, to serve a "purchase notice" (or "listed building purchase notice")

requiring a local authority to purchase his interest in the land.

16. It would be inconsistent with the proposal in paragraph 14 to retain the exemption of Crown land from compulsory purchase, if the present relationship of the Crown to purchase notices and listed building purchase notices were changed. It is therefore proposed to maintain the present position. Crown bodies would thus not be able to serve a purchase notice or listed building purchase notice requiring a local authority to purchase their interest in the land, following an adverse planning or listed building control decision.

Enforcement

17. The Government considers that it would be inappropriate for the enforcement provisions of the planning legislation, particularly those which contain criminal sanctions or permit the local planning authority to enter land, to apply to the Crown. It is therefore proposed that in lieu of the enforcement provisions and injunctive or criminal proceedings the "enforcing" authority would be able to apply to the High Court for a declaration of the rights of the parties. Such a declaration would set out what the legal position is. If the Crown is shown by a declaration to have acted in breach of planning control, it would, of its own accord, remedy the position. Similar provisions are contained in s.159 of the Environmental Protection Act 1990. It is expected that any "enforcement" proceedings would refer to the appropriate Secretary of State or Minister or a named officer of the Crown or Parliament. Neither the existing enforcement provisions nor the new proposals would apply to the Queen in her private capacity or in the right of the Duchies of Lancaster and Cornwall.

18. It is proposed that the provisions of the planning legislation which give rights of entry to land for purposes other than enforcement will apply to Crown land. For example, the provisions of s.324 of the Town and Country Planning Act 1990, which provides for authorised persons to enter land for the purposes of surveying it, inter alia, in connection with development plans and certain applications and notices made under the 1990 Act. Exceptionally, it is proposed that these provisions will not apply to land or buildings in the occupation of the Queen, the Duchy of Cornwall, or the Duchy of Lancaster. Where such land is involved, entry will be by arrangement. The provisions will, however, apply where such land is in the occupation of tenants.

Tree preservation orders

19. It is proposed that, in general, the existing statutory planning procedures relating to the protection of trees should apply to Crown land. It is proposed that the enforcement provisions relating to trees will be replaced by the declaratory procedure outlined in paragraph 17 above.

Conservation area consent and listed building consent

20. It is proposed that the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 will, with the exception of development proposals involving national security, the compulsory acquisition proposals in section 47, and certain enforcement provisions, apply to Crown bodies. It is proposed that the declaratory system outlined in paragraph 17 above would apply rather than enforcement procedures relating to contravention of the listed building legislation and non-compliance with a conservation area enforcement notice.

Scheduled monument consent

21. It is proposed that, with the exception of development proposals involving national security, the provisions of the Ancient Monuments and Archaeological Areas Act 1979 will, in general, apply to Crown bodies. Accordingly, Crown bodies will formally apply to the Secretary of State for National Heritage for scheduled monument consent under the provisions of section 2 of the 1979 Act in lieu of scheduled monument clearance under Part IV of DOE Circular 18/84 (Welsh Office Circular 37/84). It is also proposed that the declaratory procedure mentioned in paragraph 17 would apply, rather than enforcement provisions relating to failure to obtain scheduled monument consent or to comply with a condition imposed on a consent.

Land adversely affecting amenity of neighbourhood

22. It is proposed that sections 215-219 of the Town and Country Planning Act 1990 would apply to the Crown but that enforcement action under these provisions would be by way of the declaratory procedure mentioned in paragraph 17 above. It is proposed that the power of local planning authorities (under s.219) to enter land to execute works required by s.215 would not apply to Crown land. The declaratory procedure would make this unnecessary.

Permitted development rights

23. It is proposed that Crown bodies will benefit from the permitted development rights available to other developers. This will be to the advantage of local planning authorities which might otherwise have to process large numbers of planning applications for relatively trivial items.

Revocation, modification and discontinuance orders

24. It is proposed that the provisions of sections 97 and 102 of the Town and Country Planning Act 1990, relating respectively to revocation and modification of planning permission (granted by the local planning authority or the Secretary of State for the Environment or Wales), and to the discontinuance of the use of land, will apply to Crown bodies. Similarly, the provisions of sections 23 and 26 (revocation and modification of listed building consent) of the Planning (Listed Buildings and Conservation Areas) Act 1990 will apply to Crown bodies.

Advertising

25. It is proposed that Crown bodies will be subject to the same procedures as other applicants in respect of outdoor advertisement.

Hazardous substances

26. It is proposed that the provisions of the Planning (Hazardous Substances) Act 1990 will, with the exception of proposals involving national security and the provisions relating to enforcement, apply to Crown bodies. It is proposed that the declaratory system referred to in paragraph 17 should replace existing enforcement provisions (including injunctive or criminal proceedings and rights to enter land) in respect of contraventions of hazardous substances control.

Habitats Directive/Wildlife and Countryside Act

27. Crown bodies will have to comply with the measures to be introduced to implement the Habitats Directive and the Wildlife and Countryside Act in relation to their development proposals.

Conclusion

28. Comments are invited on the proposals in this consultation paper. They should be sent to M D Porter, Department of the Environment, Room C13/13, 2 Marsham Street, London SW1P 3EB, by Thursday 14 January 1993.

TRUNK ROAD DEVELOPMENT - PROCEDURES REQUIRED UNDER THE HIGHWAYS ACT 1980

1. After a scheme is accepted into the roads programme, design agents are appointed to conduct an initial technical appraisal. This identifies potential alternative routes within the scheme corridor. Statutory organisations, local authorities, and other Government departments are consulted in confidence at this stage. Statutory consultees include English Heritage, English Nature and the Countryside Commission.
2. A public consultation is held when information on alternatives, including their environmental impact, is presented and views invited. Comments and representations from the organisations which have been consulted, the public and other environmental organisations are taken into account in the choice of route for further development.
3. A report and recommendation to Department of Transport (DTp) Ministers on the preferred route is prepared and a public announcement made. At this stage formal notice is served on the local planning authority to protect the preferred route from development.
4. The design of the scheme is then worked up, consulting relevant bodies as necessary, to the stage when a draft line order can be prepared for a new length of trunk road or motorway, (and in some cases also draft side roads and compulsory purchase orders). The draft order(s) to implement the scheme under the Highways Act 1980, are then published. However, not all schemes require statutory orders. Some works may be carried out as improvements to existing highways, in pursuance of the Secretary of State's powers as a highway authority under Part V of the Highways Act 1980. The Secretary of State is also authorised to enter into agreements with local authorities under Section 4 of the Highways Act 1980 to enable him to carry out improvements to side roads necessitated by trunk road works. All schemes in the national programme are subject to environmental appraisal and an Environmental statement in accordance with the requirements of the EC Directive on environmental impact assessment is published for any scheme which is likely to have a significant environmental impact.
5. If a Scheduled Ancient Monument is to be affected, the Department seeks consent from the Department of National Heritage for the development, in a procedure parallel to that for private developers. If common land or public open space is to be affected, exchange land may be offered and a certificate issued by the Secretary of State for the Environment under the Acquisition of Land Act 1981 confirming that it is not less in area and equally advantageous to the land taken. It is the inclusion of open space land which gives rise to the requirement to provide exchange land.

6. Public Inquiry procedures require presentation of information to those affected by the scheme and allow for objectors to present alternative routes and to request further information. Arrangements for holding an inquiry are widely publicised. Statutory objectors are sent a statement of the Secretary of State's reasons for proposing to make the orders. In practice, copies of the Statement of Reasons are sent to everyone who has made objections or representations about the scheme, and is freely available on request.

7. Public Inquiries are conducted by an independent Inspector. He or she is nominated by the Lord Chancellor and appointed by the Secretaries of State for Transport and the Environment, and is responsible for recording the facts, ensuring that everyone with an interest has a fair chance to present their case, and drawing conclusions and making recommendations. The Inspector has complete discretion over the conduct of the Inquiry and has full legal powers to call for any relevant evidence. In practice, the Inspector will hear any objector who has relevant points to make, not merely the statutory objectors.

8. Objectors may cross-examine the Department's witnesses and submit oral and written evidence. Through the Inspector, they may ask for additional information to be provided by the Department and may also request an adjournment of the proceedings while such information is provided and considered. The department can also cross-examine the objectors, will usually seek to reply to the points made, and may present further evidence in response.

9. Following receipt of the Inspector's report of the inquiry, a decision will be made by the Secretaries of State for Transport and the Environment as to whether the orders should be made as drafted or subject to such modifications and further consultation as they think fit, taking account of all the evidence presented and the Inspector's conclusions and recommendations. Where footpaths are to be stopped up, this is done within the side roads orders under section 14 of the Highways Act 1980. Both side roads orders and compulsory purchase orders may be considered at separate public inquiries or concurrently with the line order(s).

10. These procedures provide statutory procedures equivalent to town and country planning procedures.